

**RAYMOND J.  
SEIGFRIED**  
STATE REPRESENTATIVE  
7<sup>TH</sup> District



**HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
411 LEGISLATIVE AVENUE  
DOVER, DELAWARE 19901**

**COMMITTEES**  
Health & Human Development, Vice-  
Chair  
Economic Development / Banking /  
Insurance / Commerce  
Energy  
Housing & Community Affairs  
Veterans Affairs

**Interagency Pharmaceuticals Purchasing Study Group**

Meeting Minutes | December 18, 2019

Room 112 in the Tatnall Building (150 Martin Luther King Jr Blvd S, Dover, DE 19901)

Co-Chair Representative Raymond Seigfried called the meeting to order at 1:38pm.

Members present included Co-Chair Seigfried, Dean Stotler, Steve Groff, Victoria Brennan, Dr. Richard Margolis, and Faith Rentz. Secretary Kara Odom Walker was not present but sent Steven Costantino as a designee. Trinidad Navarro was not present but sent Leslie Ledogar as a designee. Dr. Marc Richman and Jim Elder were not present but sent Dr. Awele Maduka-Ezeh and Michael Records as designees. Co-Chair Senator Nicole Poore, Terry Hollinger, Tony Ward, Representative Michael Smith, and Senator Brian Pettyjohn were not present. Also present were Deborah Gottschalk, Esq. of the Division of Research and Dr. Hooshang Shanehsaz of the Delaware Hospital for Chronically Ill.

Co-Chair Seigfried presented the meeting minutes from the November 15<sup>th</sup> meeting and requested a motion.

A motion was made by Ms. Brennan, seconded by Ms. Ledogar, and unanimously approved by all Study Group members present to approve the November 15<sup>th</sup>, 2019 meeting minutes.

Co-Chair Seigfried then presented a House Concurrent Resolution extending the final report deadline until January 31<sup>st</sup>, 2020 and requested a motion. Please see Appendix 1 attached at the end of these minutes.

Ms. Ledogar asked who would write the final report.

Co-Chair Seigfried replied that he would.

Ms. Brennan asked if a deadline of January 31<sup>st</sup>, 2020 was achievable.

Co-Chair Seigfried replied that it is ambitious but attainable.

A motion was made by Co-Chair Seigfried, seconded by Ms. Brennan, and unanimously approved by all Study Group members present to approve the House Concurrent Resolution.

Co-Chair Seigfried said that he would formally file the House Current Resolution when the 150<sup>th</sup> General Assembly reconvenes in January 2020.

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Co-Chair Seigfried then re-circulated the price transparency clause that the Study Group had formally approved at the October 18<sup>th</sup>, 2019 meeting. Please see Appendix 2 attached at the end of these minutes. He then called on Ms. Rentz to discuss how her organization has utilized the clause.

Ms. Rentz presented comments on the utilization of the price transparency clause. Please see Appendix 3 attached at the end of these minutes.

Mr. Costantino asked if the information from Express Scripts was publicly available?

Ms. Rentz replied no, but certain information could be made available in aggregate form.

Mr. Stotler asked if there were any limitations on how audits were shared internally.

Ms. Rentz replied that the audits are not allowed to be shared externally, but may be allowed to be shared internally. Currently audits may only be shared amongst State Employee Benefits Committee members.

Mr. Costantino said that some states stipulate in their contracts with pharmacy benefit management (PBM) organizations that they have a fiduciary responsibility, and asked if that was the case with Delaware's contracts.

Mr. Stotler said that something of that nature should be considered in future contract bids.

Co-Chair Seigfried thanked Ms. Rentz for her work on this.

Co-Chair Seigfried then presented an outline on the purpose and progress of the Interagency Pharmaceuticals Purchasing Study Group.

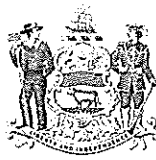
#### General Actions

- Develop an analytic profile.
- Identify and examine pharmaceutical purchasing programs in other states.
- Promote health through prescription benefit services for eligible people and entities.

#### General Outcomes

- Consolidate all the State's pharmaceutical prices and services into one data analytic profile.
- Compare and Contrast the data analytic profile.
- Implement a membership to a state consortium and/or other opportunities to leverage bulk purchasing economies of scale.

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#### Benchmark Departmental Pharmaceutical Prices and Services

- Conduct an independent audit of departments involved – especially Medicaid managed care and State Employee Benefits programs – to understand the financial impact from the current PBMs, spread pricing, rebates, manufacturer discounts, manufacturer drug switching programs, and other relevant factors.
- Work with the state consortium to analyze the feasibility of a statewide PBM.
- Create a public pharmaceutical contract offering to Delawareans; possibly through a non-profit organization.

#### New Structure

- To be determined by January 10<sup>th</sup>, 2020.

Dr. Shanehsaz said that he supports the idea of having one person or entity overseeing all the State's pharmaceutical spending. He added that Delaware is small enough where an undertaking of this nature is possible, but large enough where something of this nature could make a big difference.

Dr. Maduka-Ezeh said that data analytics are essential to knowing where the State stands pharmaceutical purchasing-wise.

Mr. Stotler said that he sees the value in having a resource or a specific person who knows what questions to ask related to pharmaceutical purchasing. He added that he is not necessarily in favor of ceding the authority that the State Employee Benefits Committee has to one person. He concluded by saying he does not necessarily care what this resource's title or location within an organizational chart is.

Mr. Costantino said that it is important to keep the momentum of the progress that this Study Group has made going forward.

Ms. Ledogar said that her organization underwent something similar when they were tasked with creating the Department of Insurance's Office of Value-Based Health Care Delivery.

Mr. Stotler said that time cycles are important to consider when discussing this idea, and mentioned specifically length of contracts, amount of time needed for negotiations, and amount of time necessary to send out requests for proposal (RFPs).

Co-Chair Seigfried said that he was working on a draft final report and hoped to have it ready by the next meeting.

Co-Chair Seigfried said that the next meetings will be held on January 17<sup>th</sup>, 2020 and January 24<sup>th</sup>, 2020.

Co-Chair Seigfried then opened the floor for public comment; nobody signed up for public comment.

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A motion was made, seconded, and unanimously approved by all Study Group members present to adjourn the meeting at 2:33pm.

These minutes respectfully submitted by:

Scott Murphy Eisenhart  
Legislative Aide – Representative Raymond Seigfried

Appendix I



SPONSOR: Rep. Seigfried

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION

EXTENDING THE REPORTING DATE FOR THE INTERAGENCY PHARMACEUTICALS PURCHASING STUDY GROUP.

1 WHEREAS, the Interagency Pharmaceuticals Purchasing Study Group ("Study Group") was established under  
2 House Concurrent Resolution No. 35 of the 150th General Assembly to research and evaluate opportunities to leverage the  
3 bulk purchasing of pharmaceuticals in Delaware to negotiate lower prices; and

4 WHEREAS, the Study Group was directed to issue a final report to all members of the General Assembly by  
5 December 31, 2019; and

6 WHEREAS, the Study Group has met regularly, beginning in August 2019; and

7 WHEREAS, the Study Group has extensively researched bulk pharmaceutical purchasing, including discussions  
8 with experts on the health care industry; and

9 WHEREAS, the Study Group has prepared a final report but needs additional information to complete  
10 recommendations; and

11 WHEREAS, State agencies will provide the additional information needed to complete the recommendations by  
12 January 10, 2020; and

13 WHEREAS, in order to appropriately conclude the Study Group's work, the Study Group's final report deadline  
14 must be modified.

15 NOW, THEREFORE:

16 BE IT RESOLVED by the House of Representatives and the Senate of the 150th General Assembly of the State of  
17 Delaware, that the date by which the final report of the Interagency Pharmaceuticals Purchasing Study Group is due be  
18 extended to January 31, 2020.

SYNOPSIS

This House Concurrent Resolution extends the date by which the final report of the Interagency Pharmaceuticals Purchasing Study Group is due to January 31, 2020.

~~Appendix 4~~ Appendix 2

MEMORANDUM

TO: HCR 35 Interagency Pharmaceuticals Purchasing Study Group  
FROM: Debbie Gottschalk, Legislative Attorney  
DATE: October 18, 2019  
RE: Draft Price Transparency Contract Clause for Contract Renewals

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Pricing Transparency and Reporting:

The contractor must provide the State of Delaware and its agencies with all of the following information:

- (a) The wholesale acquisition cost negotiated between the pharmacy benefit manager and manufacturer at any point in time for each drug contracted or purchased by State of Delaware.
- (b) The dollar amount of rebates, discounts, and price concessions that the pharmacy benefit manager received for each drug contracted or purchased by State of Delaware. The dollar amount of rebates shall include any utilization discounts the pharmacy benefit manager receives from a manufacturer.
- (c) The nature, type, and dollar amount of all other payments that the pharmacy benefit manager receives, directly or indirectly, from a manufacturer in connection with a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other function contracted or purchased by State of Delaware.
- (d) The dollar amount of any reimbursements the pharmacy benefit manager pays to contracting pharmacies, and the negotiated price covered entities pay the pharmacy benefit manager, for each drug contracted or purchased by State of Delaware.

10/9/19

# Appendix 3

## Overview:

In 2015 the Statewide Benefit Office (SBO) engaged in a highly competitive bid process to solicit Prescription Benefit Management (PBM) Services. Key components of the bid requirements included aggregated price guarantees for all drugs purchased by the plan on behalf of the members, broad access to pharmacies that could provide services to all of the members, dependents, and retirees, and that bidders were compliant with all State and Federal laws, including Delaware's Pharmacy Access Act-Title 18, Chapter 73. Recognizing the purchasing power, and the ability to save both the plan and members money that Pharmacy Benefit Managers provide, SBO selected the PBM that could deliver the best value and services for their members.

As the PBM for the State of Delaware Employee and Retiree plans, Express Scripts administers a comprehensive prescription plan designed by the SBO, where members are able to access services from over 70,000 pharmacies nationwide. ESI is compliant with State and Federal Law, including Delaware's Pharmacy Access Act-Title 18, chapter 73 and encourages patient adherence by promoting the dispensing of a 90-day supply at a discounted cost share at any participating retail or mail order pharmacies.

In response to the SBO's highly competitive solicitation for PBM Services Express Scripts presented both pass-through and traditional (spread) pricing offers. The SBO elected to accept a traditional pricing offer.

Rebates are a critical component of the financial arrangement negotiated by SBO and the PBM. The Agreement between the State and Express Scripts, Express Scripts guarantees it will make a rebate payment of a certain amount to the State for each Brand Drug filled by a member of the State's plan, or pass-through the entire amount of the rebate and manufacturer administrative fee payments Express Scripts receives for a prescription drug claim filled by a member of the State plan. In other words, the State gets the benefit of the greater of the guaranteed amount or 100% of the rebate actually received by Express Scripts. It is important to note that the drug manufacturers do not offer a rebate on every drug available in the marketplace

In addition to the competitive RFP process, SBO engages audit firms to conduct PBM Plan audits. The focus of the audit is to review and ensure ESI is in compliance with the terms and agreements outlined in the contract. The PBM Contract audit includes plan administration, claim payments, rebate payments, and a review of drug manufacturer agreements.

## Express Scripts Responses

- a) **The wholesale acquisition cost negotiated between the pharmacy benefit manager and manufacturer at any point in time for each drug contracted or purchased by State of Delaware.**

Retail pharmacies do not disclose to Express Scripts the wholesale acquisition cost for each drug they have negotiated with manufacturers, and Express Scripts does not require retail pharmacies under contract with Express Scripts to provide to their wholesale acquisition prices. Express Scripts negotiates retail pharmacy network contracts based on the current market conditions to fulfill our obligations to the State as well as all of the other plans using ESI's PBM services.

Express Scripts has several licensed pharmacy subsidiaries, including our specialty pharmacies. In order for Express Scripts to remain market competitive and negotiate the deepest discounts on drugs for all clients, including the State of Delaware, the wholesale acquisition cost that Express Scripts has negotiated with pharmaceutical manufacturers for drugs purchased by the State must remain confidential.

However, SBO auditors have visibility to this data during the PBM Plan audit.

- b) **The dollar amount of rebates, discounts, and price concessions that the pharmacy benefit manager received for each drug contracted or purchased by State of Delaware. The dollar amount of rebates shall include any utilization discounts the pharmacy benefit manager receives from a manufacturer.**

The contracts Express Scripts negotiates with manufacturers for rebates are highly confidential. In order for Express Scripts to remain market competitive and offer the best price and services for all clients, including the State of Delaware, drug level rebate and discount data must remain confidential.

Based on the PBM Agreement and the State's drug utilization, SBO has projected the following rebate payments for FY20

- Active Plan-Employees and Non Medicare Retirees - \$40,300,000
- State's Employer Group Waiver Plan \$26,300,000

Recognizing rebate information is highly confidential, auditors hired by SBO do conduct a thorough review of the PBM rebates received on behalf of the State.

The following rebate activities are included in the SBO Plan Audit:

- ESI Manufacturer Agreements
- Rebate contract terms including financial reconciliation
- Rebate Payments
- Rebate Reporting

- c) **The nature, type, and dollar amount of all other payments that the pharmacy benefit manager receives, directly or indirectly, from a manufacturer in connection with a drug switch program, a**



**formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other function contracted or purchased by State of Delaware.**

Express Scripts is passing through to the State 100% of the Rebates and Manufacturer Administrative Fees attributable to the State of Delaware's utilization. Express Scripts does not receive payments from manufacturers in connection with drug switch programs. Express Scripts does not interchange lower cost drugs with higher cost drugs.

In addition to its network of contracted retail pharmacies, Express Scripts has several licensed pharmacy subsidiaries, including our specialty pharmacies that may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers, wholesale distributors, and other health care providers. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements and may be entered into irrespective of whether the particular drug is on one of ESI's national formularies. Discounts and fee-for-service payments received by ESI's subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary.

The State of Delaware has specific, "Technology and Security Requirements"-see Exhibit H of the PBM agreement that are required to be included in all SBO contracts to ensure sensitive member data is protected, and ESI has confirmed ESI does not receive payments from manufacturers in connection with data sales related to covered individuals.

- d) The dollar amount of any reimbursements the pharmacy benefit manager pays to contracting pharmacies, and the negotiated price covered entities pay the pharmacy benefit manager, for each drug contracted or purchased by State of Delaware.**

Under a traditional pricing model, there may be a difference between the amount the PBM pays to the retail network pharmacies and the amount billed to a client for a particular claim or in aggregate. This difference, known as "spread," can be positive or negative.

Express Scripts' ability to negotiate competitive network pricing and drive value for its clients is dependent upon the confidentiality of its network agreements with retail pharmacies. In order for Express Scripts to remain market competitive and offer the best price and services for all clients, including the State of Delaware, the reimbursements amounts Express Scripts pays to contracting pharmacies, for each drug contracted or purchased by State of Delaware is confidential.